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COMMISSIONER OF INSURANCE
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STATE CAPITOL
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ATTENTION: LEGAL DEPARTMENT

BULLETIN 86-5

TO: ALL NORTH DAKOTA LICENSED INSURANCE COMPANIES
FROM: Earl R. Pomeroy, Commissioner of Insurance
DATE: November 25, 1986
SUBJECT: Use of Benefit Comparison Charts

The use of "benefit comparisons" by licensed insurance companies in the solicitation of business is a common practice in North Dakota. Benefit comparisons provide useful information to potential insurance consumers provided that the comparisons contain factual statistics and other information relating to the insurance products described. However, the Insurance Department regularly receives complaints regarding the use of misleading or inaccurate benefit comparisons.

The use of benefit comparisons is governed by N.D.C.C. section 26.1-04-03(1), (2), and (3):

26.1-04-03. Unfair methods of competition and unfair or deceptive acts or practices defined. The following are unfair methods of competition and unfair and deceptive acts or practices in the business of insurance:

1. Misrepresentations and false advertising of policy contracts. Making, issuing, circulating, or causing to be circulated, any estimate, illustration, circular, statement, sales presentation, omission, or comparison misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon, or making any false or misleading statements as to the dividends or share of surplus previously paid on any insurance policies, or making any misleading representation or any misrepresentation as to the financial condition of any person, or as to the legal reserve system upon which any life insurance company operates, or using any name or title of any policy or class of policies misrepresenting the true nature thereof, or making any misrepresentation tending to induce the lapse, forfeiture, exchange, conversion, or surrender of any insurance policy or for the purpose of effecting a pledge or assignment of or effecting a loan against any insurance.

2. False information and advertising generally. Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of that person's insurance business, which is untrue, deceptive, or misleading.
3. Defamation. Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement of any pamphlet, circular, article, or literature which is false, or maliciously critical of or derogatory to the financial condition of any person, and which is calculated to injure any person engaged in the business of insurance. (Emphasis added).

Any insurance company in violation of the provisions set forth above is subject to:

- 1) Payment of a monetary penalty of not more than \$1,000 for each and every act or violation, not to exceed an aggregate penalty of \$10,000 unless it was known, or reasonably should have been known, that the company was violating those sections in which case the penalty may be not more than \$5,000 for each and every act or violation, not to exceed an aggregate penalty of \$50,000 in any six month period; and
- 2) Suspension or revocation of its license.

The Insurance Department will undertake administrative action against insurance companies or agents using inaccurate benefit comparisons. It is a defense to said action if the company or agent can demonstrate that the benefit comparison was prepared and distributed in good faith. The Department requires the following language be conspicuously and clearly displayed in

Page Three

bold face print on all benefit comparison advertising material:

This comparison of benefits may not be completely accurate and should not be the sole source of information you rely upon in deciding which insurance coverage to purchase. For completely reliable benefit comparisons, the North Dakota Insurance Department advises that you obtain the benefit schedules directly from each applicable insurance company.

The Department intends to investigate any complaints which set forth facts constituting a violation of section 26.1-04-03(1), (2), and (3) N.D.C.C.

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